

Message Text

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INFO AMEMBASSY ASUNCION

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AMEMBASSY BUENOS AIRES

AMEMBASSY SANTIAGO

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C O N F I D E N T I A L SECTION 1 OF 4 MONTEVIDEO 1182

E.O. 11652: GDS

TAGS: SHUM, UY

SUBJECT: AMERICAN BAR ASSOCIATION (ABA) LAWYERS COMPLETE POSITIVE
VISIT

REF: MVD 1178

1. SUMMARY. ABA MISSION LAWYERS WILLIAM J. BUTLER AND
LUIS REQUE ACHIEVED WHAT MAY BE IMPORTANT HUMAN RIGHTS
ADVANCES IN THEIR APRIL 2-7 VISIT TO URUGUAY. FOLLOWING A
PUNISHING SCHEDULE OF OFFICIAL AND PRIVATE VISITS, THE
ABA LAWYERS REACHED AN UNDERSTANDING WITH THE MILITARY
CINCS ON THE WORDING OF THEIR RECOMMENDATIONS (REFTEL).
THE CINCS THEN INDICATED THAT THEY INTENDED TO IMPLEMENT
THE RECOMMENDATIONS IN THE MEMORANDUM AND PROPOSED THAT IT
BE RELEASED PUBLICLY UNDER A GOU COMMUNIQUE. THE ABA LAWYERS
AGREED. THE RECOMMENDATIONS FOR IMPROVING THE COUNTRY'S
HUMAN RIGHTS IMAGE EMPHASIZE FOUR SPECIFIC AREAS:

(1) BETTER TREATMENT OF POLITICAL DETAINEES, (2) TRANSFER

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OF JURISDICTION OVER CRIMES OF SUBVERSION FROM THE
MILITARY TO THE CIVILIAN COURT SYSTEM, (3) INCREASED
INDEPENDENCE FOR PRACTICING LAWYERS, ESPECIALLY IN THE
DEFENSE OF ACCUSED SUBVERSIVES, AND (4) A MORE AUTONOMOUS
LAW FACULTY. THE LAWYER'S "HERMETIC SILENCE" AND AN
APPARENTLY TIGHT GOU REIN ON THE MDEIA COMBINED TO PRODUCE
MODERATE AND RESTRAINED PRESS REACTION. ALTHOUGH ALL GOU

VOICES HAVE NOT YET BEEN HEARD, AND THE UNDERSTANDING HAS YET TO BE IMPLEMENTED, OUR INITIAL ASSESSMENT IS THAT THE VISIT MAY HAVE PROVIDED AMUCH NEEDED CATALYST, A NEW FRAMEWORK FOR DIALOGUE, AND AN IMPORTANT SHIFT FROM NEGATIVE POSTURING AND RHETORIC TO A SERIOUS EXAMINATION OF POSITIVE MEASURES THE GOU CAN TAKE TO IMPROVE ITS HUMAN RIGHTS PERFORMANCE. END SUMMARY.

2. CHAIRMAN OF THE ABA COMMISSION ON THE INDEPENDENCE OF LAWYERS IN FOREIGN COUNTRIES AND PRESIDENT OF THE AMERICAN ASSOCIATION OF THE ICJ WILLIAM J. BUTLER ARRIVED IN MONTEVIDEO ON APRIL 2 WITH HIS ASSOCIATE AND TRANSLATOR LUIS REQUE, A MEMBER OF THE BOLIVIAN BAR AND A 30-YEAR VETERAN OF THE INTERNATIONAL HUMAN RIGHTS MOVEMENT. DURING THE NEXT FIVE DAYS, THE TWO LAWYERS DEVELOPED AND FULFILLED A CRUSHING SCHEDULE OF MORE THAN 28 SEPARATE OFFICIAL AND PRIVATE MEETINGS. ON THE GOVERNMENT SIDE, THEY MET WITH: PRESIDENT MENDEZ, FONMIN ROVIRA, KEY MEMBERS OF THE COUNCIL OF STATE, THE MINISTER OF JUSTICE, THE COURT OF JUSTICE, THE MEMBERS OF THE SUPEREM MILITARY TRIBUNAL WITH A RETURN VISIT TO ITS PRESIDENT, FEDERICO SILVA LEDESMA (WHO PROVED TO BE AN IMPORTANT FIGURE IN THE PRELIMINARY JOCKEYING FOR POSITION), THE RECTOR AND LAW FACULTY OF THE UNIVERSITY, A SELECTION GENERALS FROM THE ARMED FORCES POLITICAL COMMISSION AND AN IMPORTANT WRAP-UP SESSION WITH THE ARMY AND NAVY CINCS PLUS GENERAL CARDOZO, STANDING IN FOR ABSENT AF
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CINC BENDAHAN. OUTSIDE THE GOVERNMENT, THEY MET WITH THE ARCHBISHOP, THE DIRECTORATE OF THE URUGUAYAN BAR ASSOCIATION, NUMEROUS OTHER PROMINENT (AND OFTENTIMES PERSECUTED) LAWYERS, "BUSQUEDA" EDITOR RAMON DIAZ AND OTHER MEDIA FIGURES, JULIO SANGUINETTI AND OTHER POLITICAL LEADERS, AND THE RELATIVES OF FOUR WELL-KNOWN HUMAN RIGHTS VICTIMS PLUS, IN ANOTHER MEETING, VICTIMS OF TUPAMARO OUTRAGES. IN ADDITION, THEY WERE ABLE TOVOO WITH RECENTGY RXLEASD LAWYERS SCHURMANN PACHECO, EMILIO BIASCO AND HUGO FABRI, TO DISCUSS THE CIRCUMSTANCES OF THEIR ARREST, DETENTION AND ULTIMATE RELEASE, AND WHAT RESTRICTIONS, IF ANY, WILL BE PLACED ON THEIR FURTHER PRACTICE OF LAW. (BUTLER AND REQUE WERE ASSURED BY HIGH GOU OFFICIALS THAT ALL WOULD BE PERMITTED TO PRACTICE FREELY, UPON APPLICATION BY THEIR LAWYERS.)

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3. THEMES. THROUGHOUT THE VISIT, BUTLER AND REQUE
EMPHASIZED THE LEGAL FOCUS OF THEIR VISIT, THAT THEY
DID NOT REPRESENT A HUMAN RIGHTS INVESTIGATING TEAM PER SE,
BUT RATHER WERE TWO PROMINENT AND SEASONED INTERNATIONAL
LAWYERS ON A MISSION FOR THE AMERICAN BAR ASSOCIATION TO
STUDY THE STATUS OF THE RULE OF LAW IN URUGUAY AND
ALLEGATIONS OF GOU INFRINGEMENTS ON THE LEGAL PROFESSION.
NONETHELESS, THEY ADDRESS THATMOST ALL INDIVIDUAL RIGHTS
PROBLEMS IN URUGUAY IN THEIR DISCUSSIONS, AND IN THEIR
FINAL AIDE-MEMOIRE, WHICH IS TO BE PUBLISHED BY THE GOU.
IN DISCUSSIONS THEY FOCUSED ON THE FOLLOWING FOUR THEMES:
A. TREATMENT OF DETAINEES. THEY EXPRESSED
CONCERN THAT URUGUAY WAS NOT HONORING THE
INTERNATIONAL AGREEMENTS CONCERNING CIVIL AND POLITICAL
RIGHTS TO WHICH IT IS SIGNATORY, AND ESPECIALLY
DEPLORED ALLEGED USE OF TORTURE DURING THE "PRESUMARIO" OR
INVESTIGATIVE PHASE OF CRIMINAL PROSECUTION. THEY ASKED THAT
ORDERS BE ISSUED TO ALL ARRESTING AND DETAINING
AUTHORITIES PROHIBITING TORTURE IN ANY FORM, AND
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ESTABLISHING SEVERE PENALTIES FOR ANYONE WHO
CONTINUES TO ABUSE PRISONERS. (NOTE: THEY WERE
INFORMED, BY GOU AUTHORITIES THAT SUCH AN ORDER
HAD ALREADY BEEN ISSUED, THAT ONLY ONE CASE OF
TORTURE HAD OCCURRED IN 1978, AND THAT THE
OFFENDERS WERE BEING PROSECUTED FOR THEIR CRIME.)

B. MILITARY LEGAL JURISDICTION OVER CIVILIANS:

THEY REQUESTED THAT ALL PRISONERS NOT PRESENTLY CHARGED WITH A CRIME BE RELEASED AND THAT A THOROUGH REVIEW OF ALL PENDING CASES BE MADE, WITH AN EYE TO DISMISSING THOSE CASES WHERE INSUFFICIENT OR QUESTIONABLE EVIDENCE WAS FOUND. THEY REQUESTED THAT THE TREND OF RELEASING PRISONERS NOT DIRECTLY INVOLVED IN SUBVERSIVE ACTIVITIES CONTINUE AND ACCELERATE, WITH THE GOAL OF 500 SUCH RELEASES BEFORE THE END OF THE YEAR.

(NOTE: BUTLER AND REQUE ACCEPTED GOU STATISTICS THAT 400 SUCH RELEASES HAD OCCURRED IN 1977 AND AN ADDITIONAL 100 THUS FAR IN 1978. THESE 500, ACCORDING TO THE GOU, REPRESENT ONE-THIRD OF THE NON-HARDCORE POLITICAL DETAINEES. SINCE THIS NUMBER OF RELEASES EXCEEDS OUR ESTIMATES, WE WILL ATTEMPT TO VERIFY THE GOU FIGURES.) BUTLER AND REQUE ASKED FOR A SERIOUS RECONSIDERATION OF THE USE AND MISUE OF "MEDIDAS PRONTAS DE SEGURIDAD" (PROMPT SECURITY MEASURES) IN ORDER TO GUARANTEE THE RIGHT OF HABEUS CORPUS AND FREEDOM FROM ARBITRARY ARREST. LASTLY, THEY REQUESTED THAT AS MANY CURRENT PROSECUTIONS FOR SUBVERSION AS POSSIBLE, AND ALMOST ALL FUTURE ONES, BE TRANSFERRED TO CIVILIAN JURISDICTION.

C. INDEPENDENCE OF THE JUDICIARY AND THE LEGAL PROFESSION: BUTLER AND REQUE REQUESTED THAT LAWYERS NO LONGER BE PROSECUTED FOR THE MERE PERFORMANCE OF THEIR PROFESSIONAL DUTIES, EVEN IF THIS INVOLVES THE DEFENSE OF SUBVERSIVES. IN PARTICULAR, CONFIDENTIAL

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THIS PRINCIPLE SHOULD BE APPLIED TO THE CASES OF SCHURMANN, BIASCO, FABRI AND FRAGA. IN ADDITION, THEY ASKED THAT SPECIFIC PROVISIONS OF INSTITUTIONAL ACT NO. 8 BE RECONSIDERED, SPECIFICALLY ARTICLE 10 WHICH EXPANDS THE EXECUTIVE'S ADMINISTRATIVE POWER OVER THE JUDICIARY; ARTICLES 42 AND 48 WHICH FORCE NEWLY APPOINTED JUDGES AND SITTING JUDGES, RESPECTIVELY, TO UNDERGO A FOUR-YEAR PERIOD OF PROBATION BEFORE THEY ARE CONFIRMED; AND ARTICLE 18 WHICH EXPANDS THE DEFINITION OF THE JURISDICTION OF THE MILITARY JUSTICE SYSTEM, TO THE POINT THAT IT BECOMES WHATEVER THE EXECUTIVE DECLARES IT TO BE. FINALLY, THEY ASKED THAT THE UNDERLYING PRINCIPLE OF INSTITUTIONAL ACT NO. 8 (I.E., CONTROL OF THE JUDICIARY BY THE EXECUTIVE) BE REEXAMINED.

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IN THEIR FINAL HARD BARGAINING SESSION WITH THE
CINCS, BUTLER AND REQUE DECIDED TO WITHDRAW THEIR
REQUEST THAT THE PROPOSED "PROFESSIONAL HONOR
TRIBUNALS" BE ABOLISHED. (THE INTENSITY OF THESE
NEGOTIATIONS GIVES ADDITIONAL AUTHENTICITY TO THEIR
CONVERSATIONS AND SIGNIFICANCE TO THEIR FINAL PRODUCT.)
D. THE LAW FACULTY: BUTLER AND REQUE STRESSED
THAT, IN ORDER FOR THE LAW FACULTY TO CONTINUE ITS
TRADITION OF EDUCATIONAL EXCELLENCE AND SCHOLARLY
INQUIRY, ITS PROFESSORS AND STUDENTS MUST BE FREE
FROM INTERFERENCE AND INTIMIDATION.

4. BUTLER AND REQUE MET FIRST WITH HIGH-RANKING CIVILIAN
MEMBERS OF THE GOVERNMENT AND LATER WITH THE LEGAL
ESTABLISHMENT. DURING THIS PERIOD, EXTENSIVE PROBING
WAS DONE, AND THE RESULTS WERE REPORTEDLY COMMUNICATED
RAPIDLY TO THE GOU'S MILITARY LEADERSHIP, WHO COULD
ULTIMATELY DECIDE THE GOVERNMENT'S REACTION TO THE
VISITORS'S RECOMMENDATIONS. FORMER FONMIN JUAN CARLOS
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BLANCO, WHO WAS OFFICIALLY DESIGNATED TO ASSIST THE LAWYERS'
MISSION, AND PRESIDENT OF THE SUPREME MILITARY TRIBUNAL
SILVA LEDESMA PLAYED KEY ROLES THROUGHOUT THE WEEK IN
MAINTAINING THIS UNACKNOWLEDGED BUT OBVIOUS LIAISON.
BLANCO WAS ESPECIALLY IMPORTANT BECAUSE BUTLER AND REQUE

FIRST COMMUNICATED THE FULL SCOPE OF THEIR RECOMMENDATIONS TO HIM, AND HE MAINTAINED A BEHIND-THE-SCENES INTERMEDIARY ROLE BETWEEN GENERAL ALVAREZ AND BUTLER. SILVA LEDESMA, MEANWHILE, WAS DEALING INTENSIVELY WITH THE MORE JURIDICAL CONCERNS, WHILE MORE POWERFUL OFFICIALS SCRUTINIZED THE PROCEEDINGS THROUGH REPORTS FROM THEIR GO-BETWEENS. AS THE ABA MISSION PASSED TO HIGHER MILITARY AUTHORITIES, THE CONVERSATIONS BECAME MORE SPECIFIC AND MORE PRAGMATIC.

5. FROM A HIGHLY PRODUCTIVE APRIL 6 MEETING WITH SELECTED KEY MEMBERS OF THE POLITICAL COMMISSION OF THE GENERALS' JUNTA, BUTLER AND REQUE EMERGED WITH A CONCRETE UNDERSTANDING OF THE GOVERNMENT'S POSITION AFTER A WEEK OF TESTING THE WATERS AT LOWER LEVELS AND BEHIND THE SCENES. IN THAT MEETING, ALL SUBSTANTIVE ITEMS WERE DISCUSSED AND RECEIVED A POSITIVE RESPONSE. THEN, AT THE SUGGESTION OF JUAN CARLOS BLANCO, BUTLER AND REQUE PUT THEIR RECOMMENDATIONS INTO THE FORM OF AN AIDE-MEMOIRE WHICH WAS TRANSMITTED TO THE CINCS THAT SAME EVENING THROUGH THE LAWYERS' ESCORT OFFICER. THE CINCS WERE THEREFORE FULLY BRIEFED AND ARMED WITH A CAREFULLY WORK-OVER TEXT OF THE AIDE-MEMOIRE BEFORE THE FRIDAY MORNING MEETING, SO THAT IT COULD FORM THE AGENDA OF THAT MEETING.

6. ALVAREZ OPENED THE MEETING BY ASKING THAT THE TEXT OF THE DOCUMENT BE MADE PUBLIC UNDER COVER OF A GOVERNMENT COMMUNIQUE. BUTLER HAD BEEN PREPARED TO PRESERVE THE CONFIDENTIAL

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CONFIDENTIALLY OF ALL HIS CONVERSATIONS AND THE TEXT OF THE AIDE-MEMOIRE IN ORDER TO AFFORD THE GOU TIME FOR COMPLIANCE WITH ITS RECOMMENDATIONS. HOWEVER, HE READILY AGREED TO IMMEDIATE PUBLICATION. BUTLER ALSO RECEIVED AUTHORIZATION TO ANNOUNCE THE EXISTENCE, BUT NOT THE SUBSTANCE, OF THE COMMUNIQUE WHICH WAS TO BE RELEASED LATER BY THE GOU. THUS FAR THE COMMUNIQUE WITH THE ACCOMPANYING ABA AIDE MEMOIRE HAS NOT BEEN GIVEN TO THE PRESS, ALTHOUGH THE EMBASSY WAS INFORMED BY JUAN CARLOS BLANCO THAT IT WILL BE RELEASE APRIL 9.

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7. ONLY ONE SERIOUS INCIDENT MARRED THE SCENE: AN APPARENT ATTEMPT TO SABOTAGE THE MISSION BY PROHIBITING A RECEPTION FOR THE ABA TEAM TO BE GIVEN BY THE COLEGIO DE ABOGADOS (URUGUAYAN BAR ASSOCIATION). ALTHOUGH THE GATHERING WAS OF MORE FORMAL THAN SUBSTANTIVE IMPORTANCE, A DENIAL OF THE RIGHT OF REPRESENTATIVES OF THE ABA TO MEET WITH THEIR URUGUAYAN COUNTERPARTS WOULD HAVE EMBARRASSED THE VISITING MISSION, DEMONSTRATED THE LACK OF FREEDOM GIVEN TO THE LEGAL PROFESSION HERE, AND RAISED DOUBTS ABOUT THE GOVERNMENT'S INTENTIONS. MINJUSTICE BAYARDO BENGIOA AND FONMIN ROVIRA, TWO GOU HARDLINERS, TOOK THE INITIATIVE IN "ADVISING" THE PRESIDENT OF THE COLEGIO TO CANCEL THE RECEPTION FOR PROTOCOL REASONS." HOWEVER, MORE REASONABLE FORCES PREVAILED, AND THE MEETING WAS MERELY POSTPONED FROM MONDAY TO THURSDAY EVENING.

8. COMMENT: THE MUTUAL UNDERSTANDING BETWEEN THE ABA MISSION AND THE MILITARY CINCS REPRESENTS A SIGNIFICANT HUMAN RIGHTS ADVANCE FOR URUGUAY. IT LEAPS OVER THE
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QUESTIONS OF "IS THERE A HUMAN RIGHTS PROBLEM IN URUGUAY?" AND "WHAT ARE THE DIMENSIONS OF THIS PROBLEM?" ON WHICH ALL PREVIOUS HUMAN RIGHTS EFFORTS HAVE FOUNDERED, AND ADDRESSES ITSELF DIRECTLY TO SPECIFIC SOLUTIONS.

9. THE EXPECTED PUBLISHING OF THE ABA RECOMMENDATIONS BY THE GOU, WHICH CONVEYS AN IMPLICIT ADMISSION OF PAST ABUSES, WILL BE A SIGNIFICANT STEP. WHETHER THE RECOMMENDATIONS

ARE FULLY ACTED UPON OR NO, THE DOCUMENT WILL REMAIN A BENCHMARK AND A BASIS FOR FUTURE DIALOGUE ON HUMAN RIGHTS. HAVING MOVED THIS FAR, THE GOU CANNOT EASILY RETREAT TO ITS FORMER POSITION OF REFUSING EVEN TO ACKNOWLEDGE THE EXISTENCE OF A HUMAN RIGHTS PROBLEM AND REJECTING ALL OUTSIDE MISSIONS AND EFFORTS AS FOREIGN INTERVENTION. IN ADDITION, THE VISIT: (A) DEMONSTRATED TO THE GOU, AND PARTICULARLY TO ITS MILITARY LEADERSHIP, HOW POSITIVE A ROLE AN OBJECTIVE, COMPETENT, AND SERIOUS HUMAN RIGHTS MISSION CAN PLAY; (B) BROUGHT HOME AGAIN THE UNHAPPY REALITIES OF URUGUAY'S INTERNATIONAL IMAGE PROBLEM; (C) PLACED THE MILITARY IN THE CENTER (AND IN CONTROL) OF A HUMAN RIGHTS-RELATED VISIT; (D) DEMONSTRATED THE REWARDS AND BENEFITS OF DIALOGUE AND RESTRAINT; AND (E) ACHIEVED SOME MINOR BUT POSITIVE SIDE BENEFITS, SUCH AS THE APPARENT ENERGIZING OF THE DORMANT COLEGIO DE ABOGADOS.

10. IN ANY CASE, WE BELIEVE THAT THE FORTHCOMING ATTITUDE OF GENERAL ALVAREZ AND HIS MILITARY COLLEAGUES--WHO ORCHESTRATED THE VISIT AND REACHED THE FINAL UNDERSTANDING WITH THE ABA MISSION--IS DIRECTLY RELATED TO ALVAREZ' POLITICAL NEEDS IN THE ONGOING JOCKEYING FOR POWER WITHIN THE GOU AND TO HIS KNOWN PRESIDENTIAL AMBITIONS.

11. THE CONTENTS OF THIS TELEGRAM SHOULD BE SHARED WITH
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BUTLER, WHO WILL BE IN WASHINGTON APRIL 11.
PEZZULLO

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